



Monday, December 10, 2007

U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) APPEALS PRELIMINARY INJUNCTION IN ONGOING LITIGATION OVER THE NEW SOCIAL SECURITY “NO MATCH” LETTER REGULATION

As reported in the Tindall & Foster, P.C. [Email Bulletin dated August 10, 2007](#), the U.S. Department of Homeland Security (DHS) published new regulations outlining certain steps that would be required of employers following receipt of a Social Security “no match” letter. Failure to take the required steps, described in the [Tindall & Foster, P.C. Email Bulletin dated August 16, 2007](#), within 93 days following receipt of the “no match” letter could result in a finding that the employer knew or should have known that the employment was unauthorized if the individual is later found to have been unauthorized for employment.

The ACLU Immigrant Rights Project, the AFL-CIO, and others filed suit against the Department of Homeland Security on August 29, 2007, and ultimately secured a preliminary injunction forestalling implementation of the regulation until such time as the court can decide the merits of plaintiffs’ complaint that the regulation exceeds the scope of DHS regulatory authority, and is thus illegal.

On November 23, 2007, attorneys for the Federal Government filed a Motion to Stay Proceedings pending a new regulatory effort underway to address concerns raised over the original regulation. Subsequently, in its latest legal maneuver, on December 4, 2007, the DHS filed an Appeal of the judge’s order granting the preliminary injunction, announcing via Press Release the Government’s two-pronged approach of appealing the court’s decision while at the same time pursuing a new regulatory effort that aims to address the most serious of the concerns raised by the judge with respect to the existing regulation.

As always, Tindall & Foster, P.C. will continue to monitor the litigation surrounding the Government’s latest regulatory effort in connection with employment eligibility verification, as well as all developing matters concerning worksite enforcement activity. New information will be made available to our clients via the [Tindall & Foster, P.C. web site](#), and, when appropriate, via future Email Bulletins.